

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BELLEROC COMMERCIAL, LLC,

Plaintiff,

Civil Action No. 1:12-cv-00924-PLM
Hon. Paul L. Maloney

vs.

L&KJ ENTERPRISES, LLC, KAREN
M. MOLBY, LESLEY JOHNSON,
DAVID WOLFE, AND GRAND TRAVERSE
TIRE & WHEEL, INC.,

Defendants.

Sheryl A. Laughren (P34697)
BERRY MOORMAN P.C.
Attorneys for Plaintiff
535 Griswold, Suite 1900
Detroit, MI 48226
(313) 496-1200

Patrick E. Heintz (P31443)
BISHOP & HEINTZ, P.C.
Attorneys for Defendants
440 W. Front @ Oak, PO Box 707
Traverse City, MI 49685-0707
(231) 946-4100

Kenneth M. Petterson (P43416)
Bradley D. Wierda (P63811)
James C. Baker (P62668)
SMITH & JOHNSON, ATTORNEYS, P.C.
Attorneys for Defendants' DAVID WOLFE
and GRAND TRAVERSE TIRE & WHEEL, INC.
603 Bay Street; P.O. Box 705
Traverse City, MI 49685-0705
(231) 946-0700

BRIEF IN SUPPORT OF
MOTION FOR ENTRY OF ORDER OF DISMISSAL AS TO
DEFENDANTS WOLFE AND GRAND TRAVERSE
TIRE & WHEEL, INC.

Local Rule 7.2(c), states in pertinent part:

(c) *Briefing Schedule.* Any party opposing a dispositive motion shall, within twenty-eight (28) days after service of the motion, file a responsive brief and any supporting materials.

Defendants WOLFE and GTT filed their Motion to Dismiss/Motion for Summary Judgment and Brief in Support on November 21, 2012. (Docket # 23, Docket # 24).

Defendants' Motion to Dismiss/Motion for Summary Judgment is a dispositive motion.

Local Rule 7.2(a). Under Local Rule 7.2(c), Plaintiff was required to file a Responsive Brief to Defendants' Motion by December 19, 2012. As of the close of business on December 21, 2012, no Responsive Brief has been filed by Plaintiff. In addition, no request for an extension of time to file a Responsive Brief was received by counsel for WOLFE and GTT. Counsel for WOLFE and GTT was in his office and available until 7:00 p.m. on December 21, 2012, yet no request for an extension was received.

Plaintiff is in default, and Defendants WOLFE and GTT are entitled to entry of an order granting the relief requested in their Motion to Dismiss/Motion for Summary Judgment, i.e., an order dismissing them from this case.

CONCLUSION/RELIEF REQUESTED

WHEREFORE, Defendants Wolfe and GTT request that this Court enter the proposed Order of Dismissal that is attached to Defendants' Motion for Entry of Order of Dismissal, granting to them the relief requested in their Motion to Dismiss/ Motion for Summary Judgment (Docket # 23), to-wit:

A. Enter an Order dismissing Defendants WOLFE and GTT from this case;

- B. Enter an Order declaring the Resignation Agreement and General Release dated August 17, 2012 null and void and striking Exhibit D of Plaintiff's First Amended Complaint;
- C. Award to Defendants WOLFE and GTT such further and additional relief as this Court finds to be warranted under the circumstances.

SMITH & JOHNSON, ATTORNEYS, P.C.

December 21, 2012

By: /s/Kenneth M. Petterson

Kenneth M. Petterson (P43416)

Bradley D. Wierda (P63811)

Barbara A. Assendelft (P38859)

Attorneys for Defendant David Wolfe
and GTT

I:\GROSS\Clients\Wolfe, Dave\PLEADINGS\Brief Support Motion for Entry of Order.docx